

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Administrative Company)	CC Docket No. 96-45
Federal-State Joint Board on Universal Service)	
)	
Changes to the Board of Directors of the National)	CC Docket No. 97-21
Exchange Carrier Association, Inc.)	

ORDER

Adopted: June 1, 2009

Released: June 1, 2009

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant the Universal Service Administrative Company (USAC) a limited waiver of section 54.717(f) of the Commission's rules to extend the filing deadline by which USAC's independent auditor must submit its draft audit report for calendar year 2008.¹ For the reasons stated below, we find that USAC has demonstrated that good cause exists to permit USAC's independent auditor to submit USAC's calendar year 2008 draft audit report to the Commission's Office of Inspector General (OIG) no later than July 1, 2009.

II. BACKGROUND

2. USAC is the administrator of the federal universal service support mechanisms.² In 1998, to foster greater accountability, the Commission adopted section 54.717 of its rules, which established an annual audit requirement for USAC.³ Pursuant to section 54.717 of the Commission's rules, USAC must "obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether [USAC] is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse."⁴ Section 54.717(f) of the Commission's rules requires USAC to instruct its auditors to submit a draft of USAC's required audit report to the Commission's Office of Inspector General within 105 calendar days after the end of the audit period (i.e., April 15 of each year, except for leap years, in which case the due date is April 14).⁵

¹ USAC Petition for Waiver of 47 C.F.R. 54.717(f), CC Docket No. 96-45 (filed Mar. 31, 2009) (Petition); 47 C.F.R. § 54.717(f).

² 47 C.F.R. § 54.701(a); *see Changes to the Board of Directors of the National Exchange Carrier Association and Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25069-70, para. 20 (1998) (*USAC Order*).

³ *USAC Order*, 13 FCC Rcd at 25068, para. 18; 47 C.F.R. § 54.717.

⁴ 47 C.F.R. § 54.717.

⁵ 47 C.F.R. § 54.717(f).

3. In its petition, USAC stated that it entered into a contract with PricewaterhouseCoopers LLP (PwC) to perform USAC's calendar year 2007 annual audit required by section 54.717 of the Commission's rules.⁶ USAC also stated that this agreement with PwC contained renewal options for USAC's calendar year 2008, 2009 and 2010 audits.⁷ The September 9, 2008 Memorandum of Understanding (MOU) between the Commission and USAC requires, among other things, that USAC obtain Commission approval prior to exercising a contract option having a value in excess of \$250,000.⁸ Accordingly, because the PwC renewal option for the calendar year 2008 audit exceeded \$250,000, on October 1, 2008, USAC requested Commission staff approval to exercise the renewal option.⁹ The Commission's managing director approved USAC's request on February 13, 2009.¹⁰ According to USAC, the delay in the Commission's approval was the result of numerous communications between Commission staff and USAC during the course of several months regarding the scope of the audit.¹¹

4. According to USAC, work on the USAC annual audit by USAC's outside auditors must begin no later than November of each year to ensure that the deadline of April 15 of the following year is met.¹² Because USAC received approval from the Commission to authorize work on USAC's 2008 annual audit on February 13, 2009, USAC asserts that it could not meet the April 15, 2009 audit filing deadline.¹³ Accordingly, USAC seeks a waiver of section 54.717(f) of the Commission's rules for the audit period ending December 31, 2008 and an extension of the deadline until July 1, 2009.¹⁴

III. DISCUSSION

5. Pursuant to section 1.3 of the Commission's rules, the Commission may waive any provision of its rules if it determines that good cause has been shown.¹⁵ We conclude that good cause exists to grant USAC a limited waiver of the draft audit filing deadline in section 54.717(f) of the Commission's rules.

6. USAC asserts in its waiver request that work on the 2008 audit now has begun and that PwC and USAC are working under an accelerated schedule, but that the extensive audit work necessary cannot

⁶ See Petition at 1.

⁷ *Id.*

⁸ *Id.* at 4; Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company at 7 (Sept. 9, 2008) (2008 FCC-USAC MOU), available at <http://www.fcc.gov/omd/usac-mou.pdf>.

⁹ See Petition at Attach. A (Letter from Richard A. Belden, Chief Operating Officer, USAC, to Anthony J. Dale, Managing Director, FCC (dated Oct. 1, 2008)).

¹⁰ See Petition at Attach. I (Letter from Anthony J. Dale, Managing Director, FCC, to Scott D. Barash, Acting Chief Executive Officer, USAC (dated Feb. 13, 2009) (Feb. 13, 2009 Approval Letter)).

¹¹ Petition at 5-9.

¹² *Id.* at 2.

¹³ *Id.* at 2, 10.

¹⁴ *Id.* at 2.

¹⁵ 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

be completed by the April 15, 2009 deadline.¹⁶ USAC further asserts that its inability to meet the April 15, 2009 deadline was not the result of a lack of diligence by USAC.¹⁷ Rather, as explained above, the initiation of the audit was delayed both by the negotiations regarding the scope of the audit and in USAC's receipt of the Commission's authorization to exercise the renewal option for its 2008 annual audit.¹⁸ We find that USAC's explanations for the delay in initiation of its calendar year 2008 draft audit report are reasonable, and that USAC appropriately refrained from instructing PwC to begin work on its 2008 USAC audit until the Commission authorized USAC to provide PwC with such instruction.

7. Further, grant of this waiver and extension is consistent with past limited waivers, which allowed USAC's auditor sufficient time to file its audit report drafts.¹⁹ Waivers and extensions were appropriate in those instances because they would result in more accurate and complete draft audit reports, and would cause no harm because Commission audit staff, USAC, and the independent auditor still would review the draft audit reports once submitted and comply with all other provisions of section 54.717 of the Commission's rules.²⁰

8. Ultimately, in 2003, the Commission permanently extended the deadline for the submission of USAC's annual audit report draft from 60 days to 105 days after the end of the audit period.²¹ In its order permanently extending the deadline for USAC's annual draft audit reports, the Commission found that no harm would result by providing the independent auditor an additional 45 days to submit the draft audit report because the extended audit deadline still would provide Commission audit staff and the independent auditor sufficient time to review the draft audit report and comply with the other provisions of section 54.717 of the Commission's rules.²²

9. We find that the prior rationales for both permanently and temporarily extending USAC's draft audit report filing deadlines in the past apply to USAC's instant waiver request. Specifically, the deadline extensions would: (1) serve the public interest by resulting in more accurate and complete draft audit reports; and (2) cause no harm because Commission staff, USAC, and the independent auditor still would be required to comply with all audit provisions of section 54.717 of the Commission's rules.²³ We find that granting USAC's instant waiver request similarly will serve the public interest and will cause no harm.

¹⁶ See Petition at 2, 10.

¹⁷ *Id.* at 2.

¹⁸ See *supra* paras. 3-4.

¹⁹ See *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Petition for Rule Change of Section 54.717(f) of the Commission's Rules and Regulations*; Order, CC Docket Nos. 96-45, 97-21, 18 FCC Rcd 6063, 6064, para. 4 (2003) (*Audit Deadline Extension Order*) (noting that USAC had received audit draft filing deadline extensions on behalf of the independent auditor for the 1998, 2000, 2001, and 2002 annual audits).

²⁰ See, e.g., *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 17 FCC Rcd 3698, 3700, para. 7 (Com. Car. Bur. 2002) (*2002 Audit Deadline Waiver Order*).

²¹ See generally *Audit Deadline Extension Order*; see also 47 C.F.R. § 54.717(f).

²² See *Audit Deadline Extension Order*, 18 FCC Rcd at 6064, para. 4.

²³ See, e.g., *2002 Audit Deadline Waiver Order*, 17 FCC Rcd at 3700, para. 7; see also *Audit Deadline Extension Order*, 18 FCC Rcd at 6064, para. 4.

10. For the reasons stated above, we conclude that granting USAC a limited waiver of the draft audit report deadline set forth in section 54.717(f) of the Commission's rules is justified under section 1.3 of the Commission's rules.²⁴

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the request for waiver filed by USAC of section 54.717(f) of the Commission's rules, 47 C.F.R. § 54.717(f), IS GRANTED.

12. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. §1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief
Wireline Competition Bureau

²⁴ 47 C.F.R. §§ 54.717(f), 1.3.